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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Secretary-General

Summary

In its resolution 71/282, the General Assembly endorsed the recommendation of the Advisory Committee on Administrative and Budgetary Questions that the Secretary-General submit, for consideration at the seventy-second session of the Assembly, a final progress report on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch. As the construction project is still in the defects liability phase and not all tasks have been completed, the current report is presented as another progress report, and a final progress report will be submitted to the Assembly at its seventy-third session.

The present report is the seventh progress report on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch, and provides an update on the project since the issuance of the previous report of the Secretary-General (A/71/753). Substantial completion of the project was achieved on 1 December 2016, which marks the start of the defects liability period. The Mechanism has occupied the facility since 5 December 2016. The project team continues to monitor the punch-list rectifications, which are expected to be completed by 30 April 2018, the end date of the extended defects liability period. Concurrently, and in coordination with the Office of Central Support Services and the Office of Legal Affairs, the Mechanism is assessing the options for the appropriate recovery of costs arising out of delays pursuant to paragraph 7 of resolution 70/258.The project team has recorded design-related defects relating mainly to the heating, ventilation and air-conditioning system and is working with the architect on rectifications. It is expected that the final project costs, including the rectification of design defects, will be within the approved budget.

The General Assembly is requested to take note of the present report.

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I. Introduction

1. Following the adoption by the General Assembly of its resolution 66/240 A, the project for the construction of a new facility for the Arusha branch of the International Residual Mechanism for Criminal Tribunals commenced in January 2012. In the same resolution, the Assembly appropriated an initial amount of $3 million to cover expenses related to the conceptual design phase of the project. In its resolution 67/244 B, the Assembly authorized the activities related to all phases of the construction of the facility and also authorized the Secretary-General to establish a multi-year special account for the project. In its resolution 68/257, the Assembly appropriated an additional amount of $5.8 million, approving a total of $8.8 million for the project.

2. Six progress reports on the project have been submitted previously, outlining, inter alia, the project expenditure and costs, as well as the implementation of the requests and recommendations of the General Assembly. The present report constitutes the seventh progress update. It describes the progress made since the issuance of the previous report (A/71/753) and provides updated information on the governance of the project, progress made during the reporting period, and updated expenditure and projected cost to completion.

3. Substantial completion of the project was achieved on 1 December 2016. This marked the conclusion of the construction phase and the beginning of the post-occupancy phase. The new facility has been occupied by the Mechanism since 5 December 2016.

4. The project remains within the approved budget of $8.8 million, inclusive of the contingency provision. The contingency provision has a projected balance of $416,981.

5. The Secretary-General is grateful to the host State, the United Republic of Tanzania, which continues to be actively engaged in supporting the project team and the facility, including security enhancements and the importation of items required for the completion of the punch list.

6. The present reporting period, which covers the sixth and final stage of the project, is referred to as the defects liability period (project closeout). However, there have been delays in completing some of the works: after the latest inspection by the architect, in November 2017, only 170 of the 880 defects have been corrected. This was due to a protracted negotiation with the contractor regarding payments, which nevertheless have recently been resolved. In the interim, the contractor has made further progress on the punch list and is awaiting inspection and certification by the architect.

7. The main activities undertaken since the issuance of the previous report include the following:

(a) Works on site continued during the defects liability period, which commenced on 1 December 2016, the date of substantial completion. The project team, in close coordination with the architect, continued to review and monitor punch-list rectifications in order to complete, in a timely manner, all repairs to the items included in the punch list. The project team also worked to identify defects in the works, including design defects and/or defects in the construction works;

(b) The Mechanism, in close coordination with the Office of Legal Affairs, the Procurement Division and the Office of Central Support Services, and in the context of the ongoing activities in the project's defects liability phase, continued to examine options for the appropriate recovery of direct and indirect costs arising out

of delays which may be attributable to the Mechanism's contractual partners, where economically feasible, pursuant to paragraph 7 of resolution 70/258;

(c) The Office of Internal Oversight Services has started its third and final audit of the project, to cover the immediate post-construction phase, which is in progress.

II. Governance

A. Stakeholders

Project team

8. The project team is responsible for the overall coordination and oversight of the project. The Registrar of the Mechanism has served as the project owner since assuming office on 1 January 2017. The Registrar is assisted by the Head of Registry, Arusha branch, who serves as the coordinator for the project. As reported in document A/71/753, as of 1 January 2017 the responsibilities of the project manager were initially assumed by the Head of the General Services Unit, who is responsible for the Mechanism's facility management in Arusha. On 19 June 2017, the project owner recruited a dedicated project manager to replace the outgoing manager, to see the project through the defects liability period to final completion.

Host State

9. Cooperation between the Mechanism and the Government of the United Republic of Tanzania has continued to be excellent throughout the project. The Secretary-General expresses his deep appreciation for the unwavering support from the Government and its officials during the closeout period of the project.

Other stakeholders

10. Since the issuance of the previous report, the project has continued to receive technical support from the Mechanism's Legal Team, the Archives and Records Section, the Public Information Section, and the Administration and Safety and Security Section. In addition, technical support was provided on a consistent basis by the Chief of Administration, the Budget and Finance Office and the Procurement Section of the International Tribunal for the Former Yugoslavia.

11. The Secretariat, in particular through the Office of Central Support Services and the Office of Legal Affairs, continued to provide technical advice and support. The Mechanism and the Overseas Property Management Unit of the Office of Central Support Services continued to liaise on a regular basis, through dedicated missions to Arusha, videoconferences, conference calls, meetings and correspondence.

Neighbouring institutions and co-location

12. Pursuant to paragraph 4 of resolution 70/258, the Mechanism continued to engage with other international organizations and judicial institutions that are expected to move to the vicinity of its new premises, including the African Court on Human and Peoples' Rights, the African Union Advisory Board on Corruption and the African Institute of International Law. The Mechanism is the first of the institutions to open its new premises, and other projects in earlier stages are looking to the Mechanism for lessons learned and sharing of experiences. The Mechanism remains committed to continuing discussions as the neighbouring projects advance, with a view to fostering cooperation whenever it is economical, efficient, secure and possible to do so. In this regard, the Mechanism hosted an inaugural International

Organizations Open Day at its premises on 25 November 2017, with over 1,000 visitors attending the event. The Open Day was organized in partnership with other international, regional and subregional organizations in Arusha, including the aforementioned ones, the East African Community and its constituent institutions, the East, Central and Southern Africa Health Community, the Eastern and Southern African Management Institute and the Pan-African Postal Union.

13. In addition, pursuant to the recommendation of the Advisory Committee on Administrative and Budgetary Questions in paragraph 22 of its report (A/71/812), the Mechanism has considered the possibility of accommodating the Residual Special Court for Sierra Leone on the premises in Arusha. In accordance with the recommendations of the Committee in its report on the use of the commitment authority and request for a subvention to the Residual Special Court (A/71/613), the Residual Special Court conducted a comparative assessment of the costs of co-locating with the Mechanism in The Hague and in Arusha. To that end, and in addition to consultations held in The Hague, the Mechanism received a delegation from the Residual Special Court in the Arusha premises in 2017, during which consultations were held between the delegation and Mechanism staff. The Residual Special Court assessed such factors as the office space available, the information technology infrastructure and security considerations as part of its evaluation. The comparative assessment concluded that co-locating the Residual Special Court with the Mechanism in Arusha would be more expensive than co-locating it in The Hague, and that remaining in The Hague would incur no additional annual staffing or operational costs in relation to co-location. The comparative assessment also found that a relocation of the Residual Special Court to Arusha might have other practical and legal implications that would draw the attention of the judicial authorities of the Residual Special Court. The Mechanism will continue to engage with the Residual Special Court on the possibility of co-location in Arusha.

B. Oversight

Audits

14. In accordance with resolution 67/244 B, the Office of Internal Oversight Services scheduled a three-stage audit process until the immediate post-construction stage. The first formal audit of the project focused on planning and governance in the pre-construction phase and was reported in a previous report (A/70/698). That audit contained satisfactory comments, and no critical or pervasive deficiencies were found. The second audit, concluded on 16 February 2016 and reported in document A/71/753, focused on the effectiveness of the management during the construction phase. The overall result was found to be satisfactory.

15. The third, and final, audit of the project, to cover the immediate post-construction phase, remains in progress at the time of writing of the present report.

III. Progress made during the reporting period

A. Punch list and consideration of contractual remedies

16. Throughout the reporting period, the Mechanism continued to make full use of the office building. In addition, the courtroom building is fully functional and ready to host trial activity.

17. As previously reported, the project team, in close coordination with the architect, continued to review and monitor punch-list rectifications.

18. Concurrently, and in close coordination with the Office of Legal Affairs, the Procurement Division and the Office of Central Support Services, and in the context of the ongoing activities in the project's defects liability phase, the Mechanism continued to examine options for the appropriate recovery of direct and indirect costs arising out of delays which may be attributable to the Mechanism's contractual partners, where economically feasible, pursuant to paragraph 7 of resolution 70/258.

19. By November 2017, the contractor had completed only 20 per cent of the 880 items recorded on the punch list. The majority of the remaining items to be rectified on the punch list were electromechanical and architectural components, which the contractor indicated would require the deployment of the subcontractors engaged by the contractor. The contractor indicated that, owing to a protracted negotiation with the United Nations regarding the terms of payment for the pending invoice in the light of the contractor's potential liability for delay damages, amounting to up to 10 per cent of the contract price, the subcontractors were not willing to return to work; therefore, payment was needed to mobilize the subcontractors and, thus, to expedite progress towards the completion of the punch-list items.

20. Following the protracted negotiation, and in close coordination with the Office of Legal Affairs, the Office of Central Support Services and the Procurement Division, in December 2017 the Mechanism released the payment for the pending invoice to facilitate the redeployment of the necessary subcontractors. Nevertheless, the Mechanism informed the contractor that it would continue negotiations with them with regard to the recovery of delay damages. The Mechanism retains significant leverage in this regard, as the total retention amount in the contract is $316,481 and, as indicated by the architect, works in the amount of $235,000 remain to be certified. Releasing the payment of $493,075, the full amount of the pending invoice, allowed the redeployment of the subcontractors on site and expedited the punch-list rectification process while also retaining leverage on the matter of delay damages. Works on site subsequently resumed.

21. According to current estimates, the punch-list items are scheduled to be completed by the end of April 2018.

22. As the rectification of punch-list items continued past the contractual one-year defects liability period, the Procurement Division informed the contractor that the defects liability period was being extended to 30 April 2018 with respect to all of the works. The Procurement Division also informed the contractor that the United Nations had not excused any delay in the timely completion of the works and that it reserved its contractual rights and remedies.

23. Following the completion of the punch list, the Mechanism, through the architect, will ensure the resubmission of as-built drawings, an updated maintenance manual, equipment warranties, training certificates and other relevant documentation.

24. Concurrently, the project team is monitoring the handover of operation and maintenance tasks from the contractor to a firm duly contracted to carry out regular maintenance of the facility post-completion.

B. Design defects and consideration of related contractual remedies

25. During the year of occupancy of the facility, the project team recorded design-related deficiencies, which have been communicated to the architect.

26. Specifically, the heating, ventilation and air-conditioning system designed by the architect and presently installed does not meet the air quality, temperature control and relative humidity standards required by the Mechanism.

27. In coordination with the architect, the Office of Legal Affairs and the Office of Central Support Services, the project team has explored the options available to properly commission the system, which may entail the importation of some new or replacement equipment components. Following the consultations, the architect agreed to provide the necessary design input for the system in the archives building, so that it will meet the necessary temperature control, air quality and relative humidity standards.

28. The project team has emphasized to the architect that it is responsible for the redesign of the heating, ventilation and air-conditioning system, at no additional cost to the United Nations. In consultation with the Office of Legal Affairs, the Mechanism is assessing any potential remedies related to loss stemming from the faulty system design.

29. In addition to the heating, ventilation and air-conditioning system in the archives building, the project team has recorded a small number of design-related deficiencies that require remediation. In this regard, the Mechanism has already taken steps to remediate design-related deficiencies with regard to the pressure controls of the firefighting system. As safety issues are of the utmost importance, the Mechanism carried out the required remedial actions, while assessing potential methods to recover related costs from the architect. In addition, it will be necessary to reroute the chilled-water system away from the data centre for the Arusha facility. Progress on these activities will be addressed in the final report on the project.

C. Lessons learned

30. The previous report on the project (A/71/753) set out the lessons learned and best practices from other capital projects that the project team applied, and the best practices that it identified, to benefit other ongoing and future capital projects. Additional best practices identified by the project team as they pertain to the project closeout include the following:

(a) Retention of key project team staff throughout the project should be considered and given priority in order to ensure project continuity;

(b) Careful consideration should be given to the exercise of delay damages and other contractual remedies during the closeout period of the contract, as well as to the impact of exercising contractual remedies on the progress of the project.

IV. Project schedule

31. The project to construct the facility for the Arusha branch of the Mechanism commenced in January 2012. It was initially estimated to last five years and three months, with occupancy in the first quarter of 2017 (A/66/754). The project length was shortened to four years, in response to a request by the General Assembly, as reported in the report of the Secretary-General on the project (A/67/696). Owing to the delayed delivery of the curtain wall, substantial completion was delayed, yet completion was still achieved significantly ahead of the originally estimated completion date (A/71/753).

32. As noted above, the Mechanism has faced delays regarding the rectification of the punch-list items, and resulting from the identification of design defects, which require remediation. The Mechanism took proactive measures to minimize the delays. Specifically, the Mechanism brought on board an experienced, temporary, closeout project manager to see the project to final completion. The Mechanism also took the

action necessary to facilitate the redeployment of the subcontractors on site and engaged with the architect to address design defects in the shortest time possible.

33. As noted, the rectification of punch-list items continued past the contractual one-year defects liability period. The Procurement Division therefore informed the contractor that the period was being extended to the end of April 2018 with respect to all of the works. According to current estimates, the punch-list items are scheduled to be completed by the end of April 2018.

34. In addition, in coordination with the architect, the project team is prioritizing the rectification of the heating, ventilation and air-conditioning system in the archives building. The project team estimates that the rectification of the system will have been completed by the third quarter of 2018.

35. A revised project schedule, which takes into account the above, is presented in the annex.

V. Project expenditure and costs

36. The total budget approved for the project amounts to $8,787,733 (inclusive of a contingency provision in the amount of $1,050,371). Substantial completion of the project was achieved within the total approved budget. Tables 1 and 2 show actual expenditure up to 19 January 2018 and projected expenditure during the remainder of the project. Actual and projected expenditure from 2013 to 2018, including expenditure against the contingency, is also detailed in the tables.

37. The discovery of design defects will result in additional expenditure, in particular to rectify the design error of the heating, ventilation and air-conditioning system in the archives building. An initial assessment indicates that the retained amount will be sufficient for the supply and installation of equipment required to remediate the heating, ventilation and air-conditioning issues in the archives building.

38. Furthermore, it is expected that any additional costs stemming from the remediation of defective design work in the heating, ventilation and air-conditioning system or other systems would be recouped from the architect and the contractor.

39. The project team remains confident that the final project costs will be met within the approved budget. Consistent with the conclusions of the Advisory Committee on Administrative and Budgetary Questions contained in document A/71/812, any remaining unused contingency funds will be returned to Member States at the conclusion of the project.

Table 1

Disbursements and obligations for the period 2013–2018 (excluding contingency)

(United States dollars)

		Expenditure										
Description	*Approved*[a] (1)	*2013* (2)	*2014 actual disbursements according to 2014 financial statements* (3)	*2015 actual disbursements according to 2015 financial statements* (4)	*2016 final disbursements* (5)	*2017 final disbursements* (6)	*Obligations to be disbursed in 2018* (7)	*Projected expenditure from January 2018 until completion of the project*[b] (8)	*Total expenditure* (9) = sum of (2) to (8)	*Deficit to be covered by contingency* (10) = (1)-(9)	*Redeployment* (11)	*Revised deficit to be covered by contingency* (12) = (10)+(11)
I. Construction	**6 365 887**	–	**2 912**	**1 104 044**	**4 416 024**	**493 075**	**81 181**	**551 481**	**6 648 717**	**(282 830)**	–	**(282 830)**
II. Architect and project management												
Architect fees[c]	636 589	–	399 222	77 470	174 308	221 201	6 900	83 700	962 801	(326 212)	–	(326 212)
Project supervision and management[d]	635 800	155 919	143 172	154 582	179 598	–	–	–	633 271	2 529	(2 529)	–
Travel[e]	99 086	12 396	54 475	59 092	–	–	–	–	125 963	(26 877)	2 529	(24 348)
Subtotal	**1 371 475**	**168 315**	**596 869**	**291 144**	**353 906**	**221 201**	**6 900**	**83 700**	**1 722 035**	**(350 560)**	–	**(350 560)**
Total project cost (excluding contingency)	**7 737 362**	**168 315**	**599 781**	**1 395 188**	**4 769 930**	**714 276**	**88 081**	**635 181**	**8 370 752**	**(633 390)**	–	**(633 390)**

[a] Approved budget as presented in A/67/696, annex II.

[b] Corresponds to the portion of the contract not obligated against the previous budgets, to be obligated in 2018. Amounts listed do not include additional costs to remediate defective design work.

[c] Reflects the cost of hiring an external architectural consultant firm to produce detailed construction documents, perform construction administration duties and assume the responsibility of the architect of record.

[d] Reflects the cost of hiring a project manager for the day-to-day management and coordination of project activities.

[e] Reflects the cost of travel of staff between New York, The Hague and Arusha to provide technical assistance to the project.

Table 2
Breakdown of contingency provisions and expenditure against the contingency for the period 2013–2018
(United States dollars)

	Approved contingency[a]	*Expenditure against contingency*					*Total remaining contingency*
Description		*2015*	*2016*	*2017*	*2018*[b]	*Total*	
	(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)=(2+3+4+5)*	*(7)=(1-6)*
I. Construction[c]	**954 883**	**–**	**251 424**	**–**	**31 406**	**282 830**	**672 053**
II. Architect and project management							
Architect fees	95 488	64 272	85 711	189 200	(12 971)	326 212	(230 724)
Project supervision and management	–	–	–	–	–	–	–
Travel	–	–	–	3 950	20 398	24 348	(24 348)
Subtotal	**95 488**	**64 272**	**85 711**	**193 150**	**7 427**	**350 560**	**(255 072)**
Total	**1 050 371**	**64 272**	**337 135**	**193 150**	**38 833**	**633 390**	**416 981**

[a] Approved contingency provision as presented in A/67/696, annex II.
[b] Amounts listed do not include additional costs to remediate defective design work.
[c] Calculated at 15 per cent of the construction costs and architect fees.

Use of contingency

40. On the basis of lessons learned from other capital projects, and in line with industry best practice, the General Assembly approved, as proposed by the Secretary-General, a contingency provision of $1,050,371, representing 15 per cent of the estimated project cost.

41. A total of $633,390 in expenditure is expected to be charged to the contingency fund. This amount represents an increase of $38,833 compared with the estimate of $594,557 reported in document A/71/753. The difference reflects additional requirements for construction and project supervision and management due to the protracted schedule of the project, offset in part by reduced requirements under architect fees, as outlined in table 2.

42. The use of contingency remained within the appropriated overall budget and within the intended use of contingency provisions.

VI. Other matters

43. In document A/71/812, the Advisory Committee on Administrative and Budgetary Questions requested that information concerning the prescribed space per staff member in the Arusha facility of the Mechanism and comparisons with standard Secretariat ratios be provided. The Mechanism is currently considering these matters in the context of the Arusha facility and the space available for staff, and the Secretary-General will include the information in his final report on the project, to be submitted to the General Assembly at its seventy-third session.

VII. Actions to be taken by the General Assembly

44. **The General Assembly is requested to take note of the present report.**

Annex

Project schedule for the International Residual Mechanism for Criminal Tribunals, Arusha branch